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CONFIDENTIALITY OF PERSONAL INFORMATION

South Carolina law declares that all records pertaining to the identity of any person whose condition or treatment has been studied by the Department of Disabilities and Special Needs (DDSN) are confidential. The disclosure of client information and records is governed by S.C. Code Ann. §44-20-340 (~~Law. Co-op. 1976~~Supp. 2009). This section reads as follows:

§44-20-340: **Records and reports pertaining to client; confidentiality of information; waiver.**

(A) A person, hospital, or other organization may provide information, interviews, reports, statements, written memoranda, documents, or other data related to the condition and treatment of a client or applicant to the department, and no liability for damages or other relief arises against the person, hospital, or organization for providing the information or material.

(B) All records pertaining to the identity of a person whose condition or treatment has been studied by the department are confidential and privileged information. However, upon the written request of the client, the client's or applicant's parent with legal custody, legal guardian, or spouse with the written permission of the client or applicant or under subpoena by a court of law, the department may furnish pertinent records in its possession to appropriate parties.

~~Confidentiality of information and records~~

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AUTHORIZED ACCESS TO RECORDS

- A. Record Content: Information contained in the individual record, **including both paper and electronic documents**, is confidential and shall be disclosed only to authorized persons with the individual's, parent's, or guardian's consent except as otherwise stipulated in this document.
- B. Responding to Requests for Information: Verbal requests for information shall be discouraged and limited to emergency situations in which professionals or health care facilities treating the individual request immediate information for continuity of care. If there is any doubt as to the identity of the caller, a call-back system shall be used to confirm the identity of the professional or agency requesting the information. The individual's file will be documented to ~~define~~ **include** the **date, the** circumstances of the release (including what documents were released to whom), and the signature of the person authorizing the release.
- C. Release of Information: Unless required by law, the information shall not be released without written consent for release of information, signed by the individual or the legal representative. Information from the record will be available without the individual's written consent upon transfer to another agency, when required by law under a third party payment contract, and to those with a legitimate need to see the information.

ACCESS RIGHTS

- A. The Individual: The individual's record shall be made available for inspection, if requested. **Electronic documents will be printed for this purpose.** The individual will be encouraged to review the record in the presence of representative of the agency. The individual's legal representative may exercise the above right on the individual's behalf. The individual or a legal representative may receive a copy of the record within a reasonable time after the request, at the individual's expense.
- B. Individual's Family: The philosophy of ~~the State of South Carolina and the South Carolina Department of Disabilities and Special Needs DDSN~~ is that parental rights for someone under the age of majority do not terminate when a person is admitted to, or

receives services from, any of the Agency's authorized service providers. Therefore, for minors, parents have access to the records of their ~~son(s) or daughter(s)~~ **child(ren)**.

- C. Health Care and Agency Personnel: Access to records will be limited to personnel with a legitimate need for the information **or in circumstances in which access to the information is incidental to job performance, including training**. Information necessary for continuity of care will be available to health care and professional staff. Individual records used for committee and research purposes shall have the identity of the individual protected. Consent by the individual to use this information is not required. ~~A~~ Health Insurance Portability and Accountability Act (HIPAA) authorization to use information for research purposes may or may not be required.
- D. Other Health Care Agencies/Physicians Caring for the Individual: When an individual is transferred to the care of another physician, health agency or other approved service provider, information shall accompany the individual to assure continuity of care. ~~Authorization~~ **Consent** by the individual to release this information is not required.
- E. Other Health Care Providers Not Caring For the Individual: The individual's consent or that of a person legally authorized to act on his/~~or~~ her behalf must be obtained to release information to hospitals, physicians, other health care facilities, or to any person or entity with exceptions noted in this policy.
- F. Long Term Care Surveying/Accrediting/Oversight Agencies: Government and private accreditation agencies involved in long-term care may have access to an individual's record without consent, if such review relates to licensure/certification **or program integrity** requirements. For example, consent is not required in order for Medicare or Medicaid representatives to review records of Medicare or Medicaid recipients.
- G. Government Agencies: Confidential information may not be released to government agencies without valid consent from the individual or a legally authorized person, unless required by subpoena, federal law, or state statute, except as mentioned in "F" above.
- H. Insurance Companies - The individual's written consent or that of a person legally authorized to act on his or her behalf must be obtained before any information will be released to an insurance company, unless otherwise specified by third-party payment contract.
- I. Attorneys - The individual's consent or that of a legally authorized person must be obtained to release information to attorneys, even if the individual has filed a lawsuit. The agency's legal representative may obtain information to protect the interest of the agency ~~in liability or compensation cases~~.
- J. Law Enforcement Officials - Confidential information may not be released to law enforcement officials without valid consent from the individual or a legally authorized person, unless required by state or federal statute or in response to a valid subpoena. For example, valid consent is not required in law enforcement investigations of alleged abuse or neglect.

K. Subpoenas: ~~A "Subpoena duces tecum" requires a witness to produce the individual's record as outlined in the subpoena. When records or the agency are subpoenaed by the courts, the record shall be taken to the court (excluding electronic documents) by the Administrator or a person assigned by the aAdministrator. An exact photocopy of the original record (including electronic documents) along with the original record shall be taken to court. If the record is to remain in the courts, the courts shall be asked to accept the photocopy of the record and shall be requested to return this copy to the agency when the case is closed. A receipt for the photocopied record will be obtained from the court.~~ Subpoenas: A subpoena may require records to be produced at the office of an attorney, at a deposition or taken to a court hearing. Read the subpoena carefully to determine what is being requested. If the attorney does not have the legal right to review the records, an objection to the subpoena may be filed by the attorney representing the entity from whom the records were subpoenaed.

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L. News Media: Confidential information may not be released to the news media without the individual's or legal representative's consent. Individuals do not waive rights of privacy by admittance to the agency.

M. Other: Additional access rights may be granted by state and federal law including, but not limited to, the Health Insurance and Portability Act of 1996 and South Carolina's Adult Health Care Consent Act.

Consent Form: A valid consent form to release information should contain at least the following information:

- Name of the person, agency, or organization to which the information is to be released.
- The specific information to be disclosed.
- The purpose of the disclosure.
- The date the consent was signed and signature of the individuals witnessing the consent.
- A notice that the consent is valid only for a specified period of time.

If the individual has reached the age of majority and is mentally competent or is an emancipated competent minor, the individual should sign the consent form.

An unaltered photocopy of the original consent form may be accepted in lieu of the original. The original consent form or a valid photocopy of the original will be filed in the record.

FEDERAL LAW

The privacy and security of information about individuals served by ~~the Department of Disabilities and Special Needs~~ DDSN are also governed by federal law through Sections 262 and 264 of Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 and its relevant standards. "Covered entities" as defined by law and who do business with ~~the Department of Disabilities and Special Needs~~ DDSN are to be HIPAA compliant. While Public

Law 104-191 and its standards are too extensive to be cited here in their entirety or substantially, the following points are noted.

HIPAA SECURITY (164.306 Security Standards): Covered entities must ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity creates, receives, maintains or transmits.

HIPAA PRIVACY (164.508 Privacy Standards): Except as otherwise permitted or required by the privacy standards, a covered entity may not use or disclose protected health information without a valid authorization and the proper use of that authorization.

A valid HIPAA “authorization” is required to be used under very specific conditions and to contain very specific content. The “consent” mentioned above is not the same as the HIPAA “authorization,” but both purposes may be served by the creation of a single document to be signed by the individual or their personal representative. This personal representative is the person with legal authority to make health care decisions on behalf of the individual or in the case of a deceased person, a person with the legal authority to make decision on behalf of the deceased person or the estate.

Family Education Rights and Privacy Act (FERPA), 34 CFR Part 99: The confidentiality of, access to, release of, and retention of education records (as defined by the most current regulations of the Individuals with Disabilities Education Act, IDEA) including those created by DDSN or a qualified DDSN provider are governed by FERPA.

Kathi K. Lacy, Ph.D
Associate State Director-Policy
(Originator)

Beverly A.H. Buscemi, Ph.D
State Director
(Approved)